IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-1555

LENA ROSA KNECHT CONLEY,
Petitioner,

v.

[redacted]
Robert E. Hampton,
Chairman and Commissioner,
Civil Service Commission;
Henry E. Kissinger,
Secretary of State,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

LENA ROSA KNECHT CONLEY,
300 W. 35th Street,
Post Office Box 6092,
Norfolk, Virginia 23508,
Pro se.

Phone:
804-622-4951.

April 26, 1976.

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To the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Lena Rosa Knecht Conley, respectfully prays that a writ of certiorari issue to review the decision of the United States Court of Appeals for the District of Columbia Circuit of February 9, 1976.

OPINION BELOW

The United States District Court for the District of Columbia on December 11, 1974, granted defendants' motion to dismiss in Civil Action No. 74-654.

The District Court's Order appears as Appendix A-1.

JURISDICTION

The United States Court of Appeals for the District of Columbia Circuit affirmed judgment of the District Court in No. 75-1057 (Civil Action No. 74-654) on February 9, 1976.

The Court of Appeals' Judgment; with no opinion and not to be published, appears as Appendix A-2.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and 2101 (c) and Rules 13, 15, 22 and 33 of this Court.

QUESTION PRESENTED FOR REVIEW

Whether Title 5, U.S. Code, Section 8347(c), violates the United States Constitution, particularly Amendments:

I. Right to petition for redress of grievances.

IV. Right to be secure in person against unreasonable searches.

V. Freedom from harrassment by successive agency action for the same "alleged" acts of misconduct; Protection against self-incrimination creating a zone of privacy which government may not invade by requiring psychiatric consultation; Right to due process of law.

VI. Right to be informed of nature and cause of accusations; Right to assistance of counsel.

VII. Right to jury trial where value in controversy exceeds twenty dollars.

VIII. Right to protection against cruel and unusual punishment.

IX. Right to privacy in psychiatric consultations and to follow competent counsel.

XIV. Protection against abridgement of privileges or immunities of citizens of the United States; Protection against deprivation of life, liberty, or property without due process of law; Right to equal protection of the law.

CONSTITUTIONAL PROVISIONS

Article III, Section 2, United States Constitution: "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States .. or which shall be made..."

Amendments, United States Constitution: First, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, and Fourteenth, as noted under QUESTION PRESENTED FOR REVIEW.

UNITED STATES CODE

Title 5, U.S.C. § 702: Right of review.
A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.

Title 5, U.S.C. § 8347(c):
....The decisions of the Commission concerning these matters are final and conclusive and are not subject to review.

Title 28, U.S.C. § 1254: Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree....

RULES OF
THE SUPREME COURT OF THE UNITED STATES

13. Not more than ninety days after the entry of the judgment appealed from.

15. Jurisdictional statement....

22. (2) A petition for writ of certiorari shall be deemed in time when it is filed with the clerk within the time prescribed by law.

33. (2)(a). If the United States is a party, service shall be made upon the

Solicitor General,
Department of Justice,
Washington, D.C. 20530.

STATEMENT OF THE CASE

Petitioner was cleared after thorough FBI investigation and routine medical examination for employment as GS-5, Step 10, Secretary, at the Department of State (Bureau of Security and Consular Affairs) Washington, D. C., effective January 20, 1964.

Clearance for reassignment as an FSS-8, Step 9, Secretary, American Embassy, Jidda, Saudi Arabia, was granted after a more rigid medical examination, effective October 18, 1964.

Because of shortage of personnel, petitioner worked two positions, Secretary to Political Officer (her primary assignment) and Secretary to Counselor (filling in vacancy). Overwork, improper quarters, and unsanitary food caused loss of weight and fatigue, resulting in air evacuation across eight time zones February 21 - 22, 1965, from Saudi Arabia to Bethesda Naval Hospital for medical treatment.

(Coincidentally, misleading statements, basically to remove petitioner and provide a vacancy for Mary Minnick whose husband, David, was reporting for duty in February 1965, had been prepared.)

Erroneous statements from the American Embassy, Jidda, Saudi Arabia, resulted in Dr. McGrail's permitting no bedrest and no complete physical examination. Instead, petitioner--assigned to Ward 7E--had to do manual labor in the closed section and daily typing in the open, taking massive doses of medications (including unnecessary sleeping pills) until April 10, 1965, when they were halted by Dr. J. A. Pursch, who had relieved Dr. McGrail.

Always cooperative with no signs of serious depression, petitioner was found fit psychiatrically for return to work April 21, 1965, and Dr. Pursch attempted by telephone to secure a part-time assignment. The Department of State, however, improperly assigned petitioner to a GS-4 Clerk-Stenographer desk April 22, 1965, in the Bureau of Economic Affairs.

In October 1965, the Department of State refused to grant clearance for petitioner to accept offer of employment as GS-7 Shorthand Reporter at the Naval Station, Norfolk, Virginia.

Upon petitioner's objection, she was told by Dr. C. A. Klontz to see Dr. William J. Stockton, a psychiatrist. The latter told her to request a medical clearance, which was issued by Dr.Klontz of the Department of State Medical Division on December 8, 1965.

In February 1966, the Department of State again refused to grant clearance for reassignment to GS-8 Secretary in the Bureau of Public Affairs. Petitioner

was so discouraged that she asked for a leave of absence and was told by Dr. L.K. Woodward, Medical Director, Department of State, to see Dr. J. A. Pursch again.

On February 17, 1966, Dr. Pursch refused to support request for leave and referred her to Dr. James J. Cavanagh, Outpatient Clinic, Arlington Annex, for appointment February 28, 1966, "to be followed supportively for several visits."

Dr. Cavanagh agreed with Dr. Pursch that no psychiatric disability existed and suggested petitioner seek legal assistance to obtain a more appropriate assignment.

Petitioner consulted her Congressman, who suggested grievance of April 7, 1966; disability retirement was then offered and refused.

After a year's work at the Department of State following return from overseas, annual physical examination revealed the presence of two types of parasites and a grapefruit-sized tumor.

In consultation May 25, 1966, Dr. D. E. MacCarty recorded "one wonders in regard to the clinical history of stool parasites whether the mass might be the result of a previous inflammatory episode."

Humatin series were prescribed by the Department of State parasitologist May 26 - 31, 1966, and surgery was undergone June 24, 1966, at Bethesda Naval Hospital. Leave of absence from June 18 through August 12, 1966, was approved.

Petitioner was cleared physically and psychiatrically by Bethesda Naval Hospital for return to work August 15, 1966.

Petitioner was assigned to various GS-6 desks in absence of regularly assigned employees, and on September 9, 1966, received "Change in Assignment" memorandum from Robert B. Sarsfield as follows:

"As noted earlier your assignment is being changed from the Publications Cost Project to one of assisting in the preparation of the new alert lists for the CERP. Your tabulation of CERP publications cost data covering the EUR bureau was a very substantial contribution to that over-all project.

"In your new assignment you will report to Mr. Leo Ryan on problems relating to the alert lists and that effort is to have priority. To the extent that you have free time, however, it is requested that you provide secretarial support for Mr. Kauffman and Mr. Prager. You are assigned to a desk in their outer office--Room 3826--where a telephone has been installed for your use. We have asked for a typewriter that will produce excellent copy; please inform Mr. Ryan immediately if it does not do so."

It is difficult to believe the above work was performed as of November 6, 1966, by a GS-3 Clerk-Stenographer as stated in Defendants' Exhibit No. 2 forwarded by the United States Attorney on October 3, 1974. This Exhibit incorrectly shows petitioner's assignment to GS-4 Clerk-Stenographer as of May 24, 1965--

actually April 22, 1965, according to Personnel Evaluation of December 31, 1965.

On October 25, 1966, Mr. Leo J. Ryan wrote Dr. Alexander Tish, Civil Service Commission, that "From September 16, 1966, for a period of approximately four weeks, Mrs. Lena R. K. Conley was assigned to work with me. During this period she displayed the conscientiousness and superior standard of performance which I had come to expect from previous experience working with her."

Petitioner had been directed, upon her return to work August 15, 1966, to report to Dr. James B. Kludt for a "fitness-for-duty" examination. Dr. Kludt discarded the entire medical file and conducted a "witchhunt" to obtain substantiation to support involuntary retirement for "alleged" disability.

Under Dr. Kludt's direction, physical examinations were conducted by Dr. Wherry and psychological tests by E. Lakin Phillips, Ph. D., including:

Ink Blots
Guilford-Zimmerman Temperament Survey
Mooney Problem Check List
Edwards Personal Preference Schedule
Kuder Preference Record Form CH
General Intelligence Test

Dr. Kludt made his report September 15, 1966, but petitioner was never informed of the case against her. On October 4, 1966, she was relieved of her Department of State credentials and wrongfully dis-

missed, with no effort to effect appropriate reassignment.

Petitioner promptly appealed notification of December 1, 1966, of total disability by referring to Dr. J. J. Cavanagh among others.

Petitioner never ceased her efforts to secure legal assistance and to discover the nature of the "alleged" disability.

On January 4, 1971, the Civil Service Commission issued a NOTICE OF RECOVERY FROM DISABILITY based on statement of November 12, 1970, by Dr. James J. Cavanagh, confirming that he had never seen any disability in any contact with petitioner beginning February 28, 1966.

Petitioner immediately applied for reinstatement at the Department of State and locally. She was reinstated as GS-4 Clerk-Stenographer at the Naval Supply Center, Norfolk, Virginia, July 12, 1971, but was coerced into resigning July 13, 1973, because of her efforts to obtain (1) comparable previous permanent status, (2) clear record, and (3) impartial review of performance ratings.

On August 20, 1973, she received NOTICE OF DECISION from Welford M. Burrell, Chairman, Performance Rating Board of Review, that her performance justified "an overall rating of Satisfactory under the applicable system" and that "The Board unanimously and readily agrees that, under the totality of the circumstances, the appellant stood high in that category."

Defendants' Exhibit No. 1 of August 9, 1974, refers to Treasury Department check dated August 2, 1973, which was entrusted to an attorney. On February 5, 1974, he returned it stating, "I wish very much that I could represent you in your claim against the Department of State and Naval Supply Center, but I have said to you before, the burdens upon my time simply will not permit it."

Petitioner then worked to prepare and file Civil Action No. 74-654 on April 30, 1974, with the check attached. The check in the amount of $12,023.49 is attached to the case filed with the United States Court of Appeals for the District of Columbia Circuit.

ARGUMENT

I. CONSTITUTIONAL VIOLATIONS

Following the Congressman's advice to submit grievance of April 7, 1966, triggered efforts to retire petitioner for disability, abrogating her right to seek Congressional help, a violation of the First Amendment.

Sending petitioner repeatedly to psychiatrists was an unconscionable abuse of the right to be secure in person against unreasonable searches, a violation of the Fourth Amendment.

That the Civil Service Commission had a psychiatric consultant on November 9, 1966, find petitioner totally disabled

"About Oct. 1964" not only was fraudulent, but also harrassment by successive agency action for the same "alleged" behavior, a violation of the Fifth Amendment.

The Fifth Amendment guarantees a zone of privacy which government may not invade, and repeated psychiatric evaluations were violative.

Petitioner was never informed of the nature of the case against her or afforded opportunity to respond to allegations or confront witnesses, a violation of the due process guaranteed by the Fifth and Fourteenth Amendments.

Assistance of counsel has never been provided, a violation of Sixth Amendment rights.

Assigning petitioner manual labor in Ward 7E with no bedrest and no physical examination after jet flight across eight time zones was cruel and unusual punishment, a violation of the Eighth Amendment. (It may be noted that strong, healthy males have exhibited psychotic symptoms when circadian rhythm is upset and require approximately four days of complete rest to recover.)

The government does not have unlimited power to invade rights not specifically listed, and petitioner feels being ordered to report to a psychiatrist who submits a report solicited by the agency, without providing individual nature of "alleged" illness and how to control it, is an unconscionable abuse of the "right to privacy."

This is a violation of the Ninth Amendment. (This "right to privacy" is also protected by the First, Third, Fourth, and Fifth Amendments.)

That petitioner should be deprived of her right to work and marked with a "badge of infamy" (Scroggins v. U.S., 397 F.2d 295 (1968) at p. 302) to prevent her from obtaining appropriate legal assistance, reassignment, or return to the graduate work interrupted by recruitment by the Department of State, is an abuse of discretion and violation of the Fourteenth Amendment.

II. OTHER VIOLATIONS

A careful and thorough review of all the circumstances surrounding this case will reveal many instances where there was substantial departure from important procedural rights, misconstruction of governing legislation, and like error going to the heart of the administrative determination.

Petitioner was never informed at the American Embassy, Jidda, Saudi Arabia; in the Bureau of Economic Affairs, Department of State; or at the Naval Supply Center, Norfolk, that her service was not useful and efficient. Indications were always that her performance, attendance, and behavior were more than satisfactory.

There was never any indication of behavior irregularities or manifestations of unsatisfactory service, rather evaluation of December 31, 1965, stressed "she

gets along well with her fellow workers and with the officers for whom she works" and "is currently being considered by the Bureau of Public Affairs for a GS-8 position. She has, in fact, been the responsible shorthand reporter for nine of the thirteen Department of State noon press briefings held thus far this January 1966."

There was no certification that there was no suitable position vacant for which employee was qualified and willing to accept in lieu of retirement. The Department of State did not transmit the entire file to the Civil Service Commission--only such portions as would support its agency-filed application for disability retirement. Placing employee involuntarily on Leave Without Pay without consent was detrimental to the interests of the government.

The government erred in not providing the Civil Service consultant, Dr. Kleinerman, with clearances previously issued by the Department of State on August 17, 1964,
December 8, 1965,
February 17, 1966,
July 22, 1966,
and October 12, 1966.

The government should not be permitted to assign a Foreign Service Staff Secretary to a position, the top salary of which is less than that to which she is entitled, and make no attempt to reassign her to an appropriate position.

The government should not be permitted to indicate on paper an employee is performing GS-4 Clerk-Stenographer duties

and require her to fill in at GS-6 desks and serve for six weeks on a trial basis as a GS-8 Secretary reporting news conferences.

III. "CLEAN HANDS" DOCTRINE

Petitioner's case differs from that of Chafin v. Pratt, 358 F.2d 349 (1966), McGlasson v. U.S., 397 F.2d 303 (1968), Scroggins v. U.S., 397 F.2d 295 (1968), in that she has never accepted any money for alleged disability and refunded, after her wrongful dismissal, $429.29 to the Department of State, which alleged it had overpaid her, and is willing to waive money judgment.

Petitioner refused to collude in the fraudulent nature of the examination by Dr. Morris Kleinerman, the Civil Service Commission consultant, who on November 9, 1966, found her totally disabled "About Oct. 1964" at a time when she had been cleared for unrestricted assignment to a hardship post; for GS-8 Secretary, a height she has never attained; for the diagnosis of "Involutional Psychosis, Paranoid Type-Competent" no sign of which was visible during 58 days of observation at Bethesda Naval Hospital as of April 21, 1965.

The Statute of Limitations is tolled by the evidence of fraud. It could not begin to run before January 4, 1971, the date when there might be chance of successful suit.

EFFORTS TO INFLUENCE LEGISLATION

Petitioner was successful in having Congressman Whitehurst introduce on June 5, 1974, H. R. 15230, A Bill to amend Section 8347(c), Title 5, United States Code, by deleting "The decisions of the Commission concerning these matters are final and conclusive and not subject to review."

Petitioner wrote all Members of the Committees on the Judiciary, Subcommittee on Constitutional Rights, United States Senate, and Post Office and Civil Service, House of Representatives, on July 15, 1974, calling attention to the fact that S. 1688 introduced May 2, 1973, by Senator Ervin was open to abuse because an agency could still force an employee--cleared by a physician/psychiatrist--to see yet another who may elicit information or authorize tests "where such physician deems such information necessary to enable him to determine whether or not such individual is suffering from mental illness."

Petitioner's studies have led her to the Essentials of Fair Procedure (Due Process), Appendix A-3, which emphasizes the necessity of establishing "an ascertainable standard of conduct (pertinancy)" or a clear interpretation of "mental illness" or "unemployability."

Petitioner has been cautious in her approach to the Supreme Court, observing carefully the requirements for certiorari as outlined in Ashwander v. TVA, 297 U.S. 288 (1936), Appendix A-4.

That Congress is not free to provide that administrative determinations are final and not subject to review without losing its oversight responsibilities is indicated by UPI release of April 19, 1976, Appendix A-5.

REASONS TO GRANT CERTIORARI

Petitioner sincerely believes this "appeal unto Caesar" is appropriate and is grateful to live under a system where it is possible. She has not been guilty of laches nor slept on her rights, but has continued to assert them as best she knew how.

To use Judge Skelton's words in his dissent, McGlasson v. U.S. at p. 327, "To require ... to overcome suppositions and allegations like these, would be a heavy, unfair, and improper burden indeed for her to bear."

Attention is called to the discussion of the constitutionality of the congressional and administrative decision to provide no hearing before retiring a federal employee for disability found in Chafin v. Pratt, 358 F.2d 349 (1966) at p. 357.

Is Congress free to provide that the administrative determination of purely factual matters by the CSC is final and not subject to review where there is evidence of fraud?

CONCLUSION

For these reasons, writ of certiorari should issue to review judgment of the United States Court of Appeals for the District of Columbia Circuit and remand of case to the Civil Service Commission and the Department of State for such investigation as will lead to appropriate reinstatement of petitioner, or credit for time and money involved with immediate appropriate pension.

Wherefore, the premises considered, petitioner believes there are special and important reasons for justifying grant of a writ of certiorari in this case.

Respectfully submitted,

Lena Rosa Knecht Conley

Lena Rosa Knecht Conley,

pro se.

CERTIFICATE OF SERVICE

I hereby certify that three printed copies of the Petition for a Writ of Certiorari were deposited in the United States mails, first class, to:

Solicitor General,

Department of Justice,

Washington, D. C. 20530.

Lena Rosa Knecht Conley

Lena Rosa Knecht Conley,

pro se.

April 26, 1976.

APPENDIX

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LENA R. K. CONLEY,	Civil Action No. 74-654
Plaintiff,	
v.	
ROBERT E. HAMPTON, et al.,	FILED DEC 11 1974 James F. Davey, Clerk
Defendants.	

ORDER

Upon consideration of defendants' motion to dismiss and the entire record herein, and the Court being fully advised in the premises, it is by the Court this 11th day of December, 1974,

ORDERED that defendants' motion be, and it hereby is, granted, and that the action be, and it hereby is dismissed.

/s/ Aubrey E. Robinson, Jr.

UNITED STATES DISTRICT JUDGE

NOT TO BE PUBLISHED - SEE LOCAL RULE 8(b).

United States Court of Appeals
For the District of Columbia Circuit

(No Opinion)

No. 75-1057 September Term, 1975

LENA ROSA KNECHT CONLEY, Appellant
v.
ROBERT E. HAMPTON, Chairman and Commissioner, U. S. Civil Service Commission, et al.

Appeal from the United States District Court for the District of Columbia.

Before: WRIGHT and ROBB, Circuit Judges, and BRODERICK,* District Judge.

JUDGMENT

This cause came on for consideration on the record on appeal from the United States District Court for the District of Columbia and briefs were filed herein by the parties. While the issues presented occasion no need for an opinion, they have been accorded full consideration by the court. See Local Rule 13(c).

On consideration of the foregoing, it is ORDERED and ADJUDGED by this court that the judgment of the District Court appealed from in this cause is hereby affirmed.

Per Curiam

For the Court

/s/ Robert A. Bonner/
By DHC
Robert A. Bonner
Clerk

*Of the United States District Court for the Eastern District of Pennsylvania, sitting by designation pursuant to 28 U.S.C. §292(d) (1970). FILED FEB 9 1976

ESSENTIALS OF FAIR PROCEDURE

1. An ascertainable standard of conduct (pertinancy).
2. A fair accusatory procedure: The grand jury.
3. Jurisdiction over the defendant (notice).
4. A hearing.
5. A fair tribunal:
   a. An unbiased judge.
   b. A fair jury.
   c. No trial by newspaper.
   d. A prosecutor who acts within reasonable limits.
   e. The assistance of Counsel.
   f. A public trial.
6. Freedom from unreasonable searches and seizures.
7. Freedom from compulsory self-incrimination.
8. Bail.
9. Due process and no cruel and unusual punishment.
10. Fair remedies after conviction.

THE SUPREME COURT

1. The Court will not pass upon the constitutionality in a friendly, nonadversary proceeding.

2. The Court will not anticipate a question of constitutional law in advance of the necessity for deciding it.

3. The Court will not formulate a rule of law broader than the facts of the case require.

4. If possible, the Court will dispose of a case on nonconstitutional grounds.

5. The Court will not pass upon the validity of a statute on complaint of one who fails to show injury to person or property.

6. The Court will not pass upon the constitutionality of a statute at the instance of one who has accepted its benefits.

7. Whenever possible, statutes will be construed so as to avoid a constitutional issue.

(Ashwander v. TVA (297 U.S. 288:1936))

Fight threats

Congress Seeks Power on Rules

WASHINGTON (UPI)—Opposition is forming to a sweeping proposal that would permit Congress to veto rules handed down by federal regulatory and executive agencies.

Backers of the bill, which was quickly approved by the House Judiciary Committee, contend that it will return to Congress oversight responsibilities lost over the years as rule-making departments increased.

Opponents suggest that opening long-time rules for review will subject congressmen to political pressure from special-interest groups.

In 1976, more than 30,000 rules were issued by government agencies, many of which have the effect of law and are reviewed by the courts but can be overturned only if they are proven capricious, arbitrary, or in violation of law.

The proposed legislation would take effect in January 1977, and continue for six years. It would give Congress 90 days to veto a rule proposed by a federal agency, including under certain circumstances rate decisions such as those made by the Civil Aeronautics Board for airlines.

A majority vote by either house would be needed to overturn a rule.

The veto power would be retroactive to the first rule ever set by an agency. That goes back to 1946 when Congress passed the Administrative Procedures Act giving agencies power to enforce the broad objectives of Congress expressed in legislation.

Rep. Walter Flowers, D-Ala., author of the bill, described it as "only a modest attempt to give Congress the tools to exercise our legislative oversight duties."